

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Scott C. Harris	Group Art Unit 2876
Appl. No.	:	10/714,097	Confirmation: 9523
Filed	:	November 14, 2003	
For	:	BARCODE DATA ENTRY DEVICE	
Examiner	:	D. I. Walsh	

Applicants brief on appeal

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant herewith files this brief on appeal under 37 CFR 41.37, thereby perfecting the notice of appeal filed on June 16, 2010. The fee under 37 CFR 41.20-b-2 was previously filed.

The sections required by 37 CFR 41.37c follow.

Real party in interest

The application is assigned to record to Bartex Research, LLC who is hence the real party in interest.

Related appeals and interferences.

An appeal has been filed in copending divisionals and continuations,
specifically:

Appeal filed in 11/970,854 (docket Barcode C4)

Appeal filed in 12/103,815 (docket Barcode C5)

Appeal filed in 12104389 (docket Barcode C6).

No decision on the merits has been rendered in any of these applications.

Status of claims.

In the final official action mailed on February 17, 2010, claims 18, 19, 29-31, 49, 50, and 59-63 and were rejected. Claims 1-17, 20-28, 32-48, and 51-58 have been cancelled. No claim was allowed, or withdrawn, or objected to, however, claims 48, 51-58 were previously withdrawn. All of claims 18, 19, 29-31, 49, 50, and 59-63 are appealed by this appeal brief.

Status of Amendments.

A response was filed on May 17, 2010, after the final official action. In an advisory action mailed May 25, 2010, it was indicated that the amendments would be entered, but that those amendments did not put the application in condition for allowance.

Summary of the claimed subject matter

Claim 18 requires using the portable communication device the camera and display unit to obtain an image of a dual type barcode. This is shown as the element 140 in figure 1B, page 3, fourth line from the bottom through the end of the page.

Claim 18 requires that there are first and second parts interpreted by first and second barcode scanning processes. See figure 7A, and the disclosure page 11, second line from the bottom, through page 12 line 2.

Claim 18 requires receiving and displaying information from a remote server, see page 4 lines 1—4 and page 13, lines 9-22, and Figure 1b.

Claim 18 requires that the obtaining is obtaining “a whole image of the dual type bar code and later processing the image “ See page 4 lines 9-10, last 5 lines and page 5 lines 5-10, and Figure 2 elements 200-215.

Claim 60 defines “using a portable communication device with a camera and a display unit therein, to obtain an image of a bar code, which has two different bar code parts, including a first part in a first format, and a second part in a second format different than the first format”, s element 140 in figure 1B, page 3, fourth line from the bottom through the end of the page, and Figure 7A.

Claim 60 defines obtaining the whole image of the two different barcode parts and later processing the image. See page 4 lines 9-10, last 5 lines, and page 5 lines 5-10, and Figure 2 elements 200-215.

Claim 16 requires receiving and displaying information about both the first and second parts, see element 15 in figure 2 and page 4 lines 9-10.

Claim 60 defines a different time using the portable communication device to make a telephone call. See element 140 in figure 1B and the last four lines of page 3.

Grounds of rejection to be reviewed on appeal

Claim 50 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

Claims 18, 29, 30, and 60-62 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schuessler (US 2001/0045461) in view of Tracy et al. (US 6,550,672).

Claims 19 and 59 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schuessler/Tracy et al. in view of Ogasawara (US 2002/0065728).

Claims 31 and 63 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schuessler/Tracy et al. in view of Kaufman et al. (US 6,070,805).

Claim 49 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schuessler/Tracy et al. in view of Swartz et al. (US 6,655,597).

Claim 50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schuessler/Tracy et al./Ogasawara in view of Swartz et al. (US 6,655,597).

Argument

Reconsideration and allowance of the above referenced application are respectfully requested.

Claim 50 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite. This rejection was obviated by the after-final amendment.

Claims 18, 29, 30, and 60-62 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schuessler (US 2001/0045461) in view of Tracy et al. (US 6,550,672). This contention is respectfully traversed for reasons set forth herein.

Claim 18 requires a portable communication device which obtains an image of a dual type barcode. Claim 18 also receives and displays information that indicates information "beyond that which was present in at least one part of the bar code". Claim 18 defines using the portable communication device to make a phone call, and also defines that the obtaining an image comprises "obtaining a whole image of the dual type bar code and later processing the image to obtain information using a processor to obtain the information from said first part and said second part".

With respect, this combination is not shown by Schuessler in view of Tracy.

Schuessler shows what he calls a composite barcode, formed of a combination of a 1D and a 2D barcode. The specific barcode shown in Schuessler is a combination of the type 39 barcode with a micro PDF 417 barcode. See paragraph 14 of Schuessler.

Schuessler teaches decoding that barcode beginning at paragraph 30.

Schuessler has no disclosure that the decoding receives and displays information from a remote server, since Schuessler is only decoding the barcode.

Moreover, Schuessler specifically discusses how the composite barcode is decoded. Schuessler describes that either the type 39 barcode is decoded first, or the micro 417 barcode is decoded first. That is, Schuessler specifically teaches that one or the other of the barcodes is decoded first. That means that Schuessler does not teach, as claimed, that the operation is “obtaining a whole image of the dual type bar code and later processing the image to obtain information using a processor to obtain the information from said first part and said second part”, as claimed. Rather than obtaining the whole image and later processing that image, Schuessler teaches decoding one barcode first and only then decoding the other barcode.

Therefore, Schuessler does not teach this subject matter of claim 18, since Schuessler teaches decoding one barcode, then decoding the other barcode, as

compared with the claimed “obtaining a whole image of the dual type bar code and later processing the image to obtain information using a processor to obtain the information from said first part and said second part”.

Moreover, in fact, Schuessler teaches away from the claimed limitation of "wherein said using to obtain an image comprises obtaining a whole image of the dual type bar code and later processing the image to obtain information using a processor to obtain the information from said first part and said second part". This claimed limitation requires obtaining the whole image, and then decoding it. Schuessler teaches away from this, by teaching that one part should be decoded first. Schuessler teaches that one part should be decoded before the other, rather than the teaching that a whole image of the dual barcode is obtained before processing the image. The patent office comments in the office action that “The Examine notes that the Applicants argument that barcodes are separately decoded does preclude imaging.” appears to agree with this argument

The secondary reference to Tracy describes that a radio can be used with a portable bar code reader that can decode encoded indicia from an article. The data that is collected with the portable terminal is communicated to a central host, see Tracy column 3 lines 49-50. The central host is described as retrieving and processing information and retransmitting it to the portable terminals see column 6

lines 5-7. This is done to provide for example a portable checkout system.

While Tracy does teach that either 1D barcodes or 2D barcodes can be scanned, it does not disclose or suggest the subject matter of claim 18 described above -- "said using to obtain an image comprises obtaining a whole image of the dual type bar code and later processing the image to obtain information using a processor to obtain the information from said first part and said second part." In fact, nothing in Tracy describes obtaining a whole image of the dual type barcode as claimed and later processing it.

Therefore, the hypothetical combination of Schuessler in view of Tracy, assuming this combination could even be made, would teach a Schuessler style barcode with Tracy's teaching of a handheld device. This hypothetical combination of Schuessler in view of Tracy, even if made, would not disclose or teach or otherwise make obvious the claim limitation of "said using to obtain an image comprises obtaining a whole image of the dual type bar code and later processing the image to obtain information using a processor to obtain the information from said first part and said second part." Schuessler in view of Tracy would use Schuessler's teaching of decoding one barcode first and only then decoding the other barcode, or use Tracy's teaching of scanning either a 1D barcode or a 2D barcode, not both at once.

Moreover, Schuessler teaches decoding one barcode and then decoding the other bar code, and to this extent teaches away from the claimed subject matter of obtaining the whole image and later processing the image, as claimed. In fact, Schuessler teaches a linkage between one of the bar codes and the other, so that one of the barcodes is read first to get information about the other barcode. This teaches away from reading both barcodes at once, as claimed. Since Schuessler teaches away from this, Schuessler in view of Tracy must also teach away from this.

In the advisory action, the patent office stated “In response to the Applicants argument that the prior art dose not obtain an image of a barcode, the Examiner respectfully disagrees. As discussed in the office action, a CCD/camera based barcode reader is understood to capture/read the whole image, in accordance with how such devices work. Paragraph [0003] teaches the use of CCD/image capture devices, and paragraph [0008] teaches the use of a scanner that captures a full 2d image, which includes the linear and additional data...”

However, it is respectfully suggested that this interprets the Schuessler reference using hindsight obtained from reading the present specification. Paragraph 6 of Schuessler teaches simply that 2-D barcodes can carry more information than a 1D barcode. It says nothing about the claimed subject matter of

"obtaining a whole image of the dual type bar code and later processing the image to obtain information using a processor to obtain the information from said first part and said second part." Paragraph 8 of Schuessler describes that the composite code that is a hybrid of symbols using more than one encoding scheme. Rather than teaching that both of these should be captured at once, paragraph 8 describes quite the opposite: adding an included "link flag" so that the scanner knows to scan one code and then the other. Paragraph A. even says that "without a link flag a scanner would... fail to recognize that additional data was printed in an associated 2-D symbol". Schuessler paragraph 8 also states that "linkage in both directions is needed". The s linkage and instructions about reading one barcode then the other would never be necessary if the scanner captured the whole image of the dual type barcode as claimed. In fact paragraph 8 of Schuesslershows that this is not the case.

The comments in the advisory action further state

" paragraph [0056] teaches that new generation scanners can decode both." Paragraph 56 simply states that a new generation scanner is capable of decoding both kinds of barcodes. This is done in conjunction with Schuessler's teaching: that one barcode is decoded first.

Finally, the advisory action states

“Therefore, the Examiner believes it would have been obvious that an image of the barcode be captured in order to decode the various portions of the composite code, in light of the teachings that the barcode can be used with both old (linear scan) and new (interpreted as 2d/ccd based, which are interpreted to capture images for processing). The Examiner notes that the Applicant's argument that barcodes are separately decoded does preclude imaging.”

With all due respect, applicant believes that this conclusion is based on today's knowledge of barcodes rather than being based on the Schuessler prior art which, as described above, does not teach this.

Accordingly nothing in either Schuessler or Tracy or the hypothetical combination thereof, teaches the claimed subject matter of “obtaining a whole image of the dual type bar code and later processing the image to obtain information using a processor to obtain the information from said first part and said second part”. Hence the combination also could not reasonably be taught to teach this subject matter. The prior art as a whole teaches away from the subject matter of claim 18, and claim 18 should hence be allowable thereover for this reason alone.

In addition, however, claim 18 requires “receiving and displaying, on said display unit of said portable communication device, information obtained from a

remote server, which information indicates information based on a meaning that was represented by the bar code, said meaning being additional information beyond that which was present in at least one part of the bar code". The patent office apparently agrees that this is not shown by Schuessler, however cites the Tracy reference to show this. The rejection states that Tracy shows fetching information indicative of a meaning of the barcode. Tracy does describe that part of the information includes information from a remote source. Tracy does not describe using both 1D and 2-D barcodes, and as described above, does not teach the "obtaining a whole image" limitation.

The patent office states that one would have been motivated to combine these references "in order to have the convenience of a portable reader device with also displaying and telephone capability for versatility". However with all respect, the teaching to do this is found in the present specification, rather than being found in Tracy or Schuessler. In fact, Schuessler contemplates that if there is supplemental data that is needed, that supplemental data would be put into a separate (PDF 417) barcode. The only teaching to modify a system like Schuessler comes from the present specification.

Therefore, claim 18 should be allowable along with the claims that depend there from.

The claims which depend from claim 18 should be allowable for these reasons as well as on their own merits.

Claim 60 defines using a portable communication device to obtain an image of a barcode. This requires

"obtaining a whole image of the two different bar code parts of the bar code;

later processing the image to obtain information using a processor to obtain the information from said first part and said second part...".

As described above, this is nowhere taught or suggested by Schuessler in view of Tracy, even assuming that these references could be combined. Moreover, since Schuessler teaches away from obtaining the whole image and then decoding the whole image in the way claimed, it can fairly be said that Schuessler in view of Tracy teaches away from the claimed subject matter. Therefore, claim 60 should be allowable along with the claims that depend there from.

Claims 19 and 59 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schuessler/Tracy et al. in view of Ogasawara (US 2002/0065728). This contention is respectfully traversed for reasons set forth herein. These claims should be allowable by virtue of their dependency.

Claims 31 and 63 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schuessler/Tracy et al. in view of Kaufman et al. (US 6,070,805). This contention is respectfully traversed for reasons set forth herein. These claims should be allowable by virtue of their dependency

Claim 49 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schuessler/Tracy et al. in view of Swartz et al. (US 6,655,597). This contention is respectfully traversed for reasons set forth herein. These claims should be allowable by virtue of their dependency

Claim 50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schuessler/Tracy et al./Ogasawara in view of Swartz et al. (US 6,655,597). This contention is respectfully traversed for reasons set forth herein. This claim should be allowable by virtue of its dependency.

. A notice of reversal is hence respectfully requested.

Please charge any unpaid fees due in connection with this response to Deposit Account No. 50-1387.

Respectfully submitted,

Date: _8/16/2010_

/Scott C Harris/
Scott C. Harris
Reg. No. 32,030

Customer No. 23844/74162
Scott C. Harris, Esq.
Law Office of Scott C. Harris, Inc.

SCHIPLAW

P.O. Box 1389
Rancho Santa Fe, CA 92067

P 858 756 7778
F 858 756 7717
M 619 823 7778

E harris@schiplaw.com
www.schiplaw.com

Claims Appendix

1-17. (Cancelled)

18. A method, comprising:

using a portable communication device with a camera and a display unit therein, to obtain an image of a bar code, which is a dual type bar code, with a first [[a]] part that is interpreted by a first bar code scanning process to obtain first information and a second part which is interpreted by a second bar code scanning process to obtain second information that has more information than first information;

receiving and displaying, on said display unit of said portable communication device, information obtained from a remote server, which information indicates information based on a meaning that was represented by the bar code, said meaning being additional information beyond that which was present in at least one part of the bar code;

using said portable communication device to make a telephone call;

wherein said using to obtain an image comprises obtaining a whole image of the dual type bar code and later processing the image to obtain information using a processor to obtain the information from said first part and said second part.

19. A method as in claim 18, further comprising:

using said portable communication device to make a telephone call at a different time than said using to obtain an image; and

at a different time than said telephone call or said sending information indicative of said bar code, using said camera to obtain a video.

20-28. (Cancelled)

29. A method as in claim 18, wherein said first part is a linear bar code and said second part is a non-linear bar code.

30. A method as in claim 18, wherein said first process is a scan in a first linear direction and said second process is a scan in a second linear direction different than the first linear direction.

31. A method as in claim 18, wherein said second part is one of grayscale or color of the bar code.

32-48. (Cancelled)

49. A method as in claim 18, wherein said barcode is part of an advertisement, and said information obtained from said remote server represents more information about the advertisement.

50. A method as in claim 19, wherein said using comprises using the portable communication device to scan an advertisement, and wherein said information that is received from the remote server represents more information about the advertisement.

51-58. (Cancelled)

59. A method as in claim 19, wherein content of the barcode is a pointer to a remote database, and said content is decoded to determine information indicative of said pointer, and said meaning is received from said remote database based on said pointer.

60. A method, comprising:
using a portable communication device with a camera and a display unit therein, to obtain an image of a bar code, which has two different bar code parts,

including a first part in a first format, and a second part in a second format different than the first format;

obtaining a whole image of the two different bar code parts of the bar code; later processing the image to obtain information using a processor to obtain the information from said first part and said second part;

receiving and displaying, on said display unit of said portable communication device, information about both said first and second parts of said bar code; and

at a different time, using said portable communication device to make a telephone call.

61. A method as in claim 60, wherein said first part is a linear bar code and said second part is a non-linear bar code.

62. A method as in claim 60, wherein said first format bar code is intended to be scanned in a first linear direction and said second format bar code is intended to be scanned in a second linear direction different than the first linear direction.

63. A method as in claim 18, wherein one of said parts is in a grayscale of the bar code.

Evidence appendix

None

Related proceeding appendix

None